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Dkt. 43016-D/JPW/SHS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/477,147 Group Unit: 1645
Filed : June 7, 1995 Examiner: A. Caputa
For : GANGLIOSIDE-KLH CONJUGATE VACCINE PLUS QS-21

1185 Avenue of the Americas
New York, New York 10036
June 23, 1999

Assistant Commissioner for Patents
Washington, D.C. 20231
Sir:

COMMUNICATION REQUESTING CORRECTED FILING RECEIPT

This Communication is filed to request a corrected Filing Receipt in connection with the above-identified application. Upon receipt of the official Filing Receipt for the subject application, a copy of which is attached hereto as **Exhibit A**, applicants' undersigned attorney noticed errors.

Applicants hereby respectfully request that a corrected Filing Receipt be issued. After "CONTINUING DATA AS CLAIMED BY APPLICANT-", the following now appears:

THIS APPLN IS A 371 OF PCT/US94/00757 01/21/94
AND A CON OF 08/009,628 01/21/93 PAT 5,333,920

A corrected Filing Receipt should read as follows:

--THIS APPLN IS A 371 OF PCT/US94/00757 01/21/94
AND A CIP OF 08/009,268 01/22/93 ABN--



Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/477,147
Filed : June 7, 1995
Page 2

After Title, the following now appears :
GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS OS-21

A corrected Filing Receipt should read as follows:
--GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS QS-21--

Applicants contend that the changes to the Filing Receipt are due to clerical errors made by the PTO and that the title and continuation information may be found in the Declaration and Power of Attorney filed September 1, 1995. A copy of the Declaration and Power of Attorney is attached hereto as **Exhibit B**. Accordingly, applicants request that a corrected Filing Receipt be issued.

Furthermore, applicants attach hereto as **Exhibit C** a copy of the filing receipt in connection with related application 08/477,097, filed June 7, 1995 (identified by our Docket 43016-B). Applicants contend that this is prima facie evidence of the fact that the continuing data on the filing receipt should read that it claim priority of U.S. 08/009,268, filed January 22, 1993.

Furthermore, applicants attach hereto as **Exhibit D** a copy of Communication Inquiring as to Copendency of Application which is was filed in connection with U.S. Serial No 08/009,268, filed January 22, 1993, which is the parent application to the subject application and identified by our Docket No. 43016. This Communication requests the revival of U.S. Serial No 08/009,268 if it is deemed necessary.

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/477,147
Filed : June 7, 1995
Page 3

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Albert Wai-Kit Chan

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Albert Wai-Kit Chan

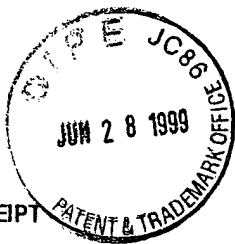
Albert Wai-Kit Chan
Reg. No. 36,479

6/23/99

Date

John P. White
Registration No. 28,678
Albert Wai-Kit Chan
Registration No. 36,479
Attorneys for Applicant(s)
Cooper & Dunham, LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

FILING RECEIPT



JP 11/1995: 1156
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
08/477,147	06/07/95	1806	\$904.00	43016-D/JPW/	26	22	1

JOHN P WHITE
COOPER & DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of the Filing Receipt with the changes noted thereon.

Applicant(s)

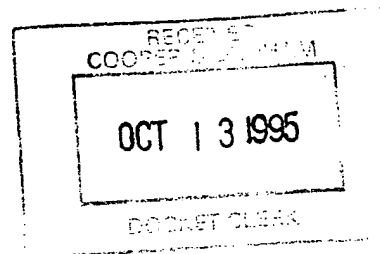
PHILIP O. LIVINGSTON, NEW YORK, NY; FRIEDHELM HELING,
NEW YORK, NY.

CONTINUING DATA AS CLAIMED BY APPLICANT-

THIS APPLN IS A CON OF PCT/US94/00757 01/21/94
WHICH IS A CON OF 08/009,628 01/21/93 PAT 5,333,920

FOREIGN FILING LICENSE GRANTED 10/05/95
TITLE
GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS OS-21

PRELIMINARY CLASS: 424



**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "FOREIGN FILING LICENSE GRANTED" followed by a date appears on the reverse side of this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.11. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related application(s) filed under 37 CFR 1.62 which meets the provisions of 37 CFR 5.15(a). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations, especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR Parts 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "FOREIGN FILING LICENSE GRANTED" DOES NOT appear on the reverse side of this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268
Filed : January 22, 1993
Page 4

between the subject application and PCT/US94/00757, they would have responded. Applicants respectfully point out that a response to the outstanding office action would have been due February 2, 1994 had they petitioned for a three-month extension of time. If the subject application was pending on February 2, 1994, then there would have been copendency with PCT/US94/00757.

Applicants noticed the possible lack of pendency between the subject application and PCT/US94/00757 as follows. Applicants had tried to correct filing receipts in connection with applications which claim priority of the subject application. Applicants were trying to correct the filing receipts to reflect that they claimed priority of the subject application. However, applicants did not receive responses from the United States Patent and Trademark Office regarding the request for corrected filing receipts. Upon further review of the prosecution history of the subject application, applicants realized that the subject application may have been unintentionally abandoned prior to the filing of PCT/US94/00757. Accordingly, if there is a lack of pendency between these applications, applicants hereby petition to revive the subject application as an unintentionally abandoned application. Accordingly, applicants contend that entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

Terminal Disclaimer

37 C.F.R. 1.137(c) requires that a petition under 37 C.F.R. 1.137(b) be accompanied by a terminal disclaimer in a nonprovisional application filed before June 8, 1995. However, applicants respectfully contend that the requirement for a terminal disclaimer is not appropriate under the present circumstances. Applicants respectfully direct the Examiner's attention to MPEP

Applicants : Philip O. Livingston and Friedhelm Helling
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Filed : January 22, 1993
Page 5

711.03(c)(III)(G) which states that:

"in the event that an applicant considers the requirement for a terminal disclaimer to be inappropriate under the circumstances of the application at issue, the applicants should file a petition under 37 C.F.R. 1.183 and the petition fee, to request a waiver of this requirement....The grant of such a petition, however, is strictly limited to situations wherein applicant has made a showing of an "extraordinary situation" in which "justice requires" the requested relief. Such situations are namely when: (A) the abandonment of the application caused no actual delay in prosecution (e.g., application revived solely for copendency with a continuing application whose prosecution was unaffected by the abandonment)...

Applicants respectfully point out that they are petitioning to revive the subject application solely to ensure that there was copendency between the subject application and PCT/US94/00757. Accordingly, applicants contend that the above example presented in the MPEP accords with the facts of the subject application. Applicants contend that the prosecution of PCT/US94/00757 has not been affected by the abandonment.

Applicants also point out that in a April 28, 1999 telephone conference, Ms. Lissi Mojica of the Office of Petitions of the United States Patent and Trademark Office indicated to Mr. Spencer Schneider of the undersigned attorney's office that the terminal disclaimer requirement could be waived under the facts of the subject application.

In support and in conformity with MPEP 711.03(c)(III)(G), applicants attach hereto as Exhibit 2, a Petition under 37 C.F.R. 1.183 and authorization is hereby given to charge the \$130.00 petition fee to Deposit Account No. 03-3125, if it is deemed necessary. Applicants contend that this satisfies the requirements such that the terminal disclaimer requirement should be waived.

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268
Filed : January 22, 1993
Page 6

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Albert Wai Kit Chan

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
<u>Albert Wai Kit Chan</u>	<u>6/23/99</u>
Albert Wai-Kit Chan Reg. No. 36,479	Date

John P. White
Registration No. 28,678
Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

PCT

REQUEST

The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty.

For receiving Office use only

International Application No.

International Filing Date

Name of receiving Office and "PCT International Application"

Applicant's or agent's file reference
(if desired: 12 characters maximum)

43016-A-PCT

Box No. I TITLE OF INVENTION

GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS OS-21

Box No. II APPLICANT

Name and address: (Family name followed by given name: for a legal entity, full official designation. The address must include postal code and name of country.)

SLOAN-KETTERING INSTITUTE FOR CANCER RESEARCH
1275 York Avenue
New York, New York 10021
United States of America

☐ This person is also inventor

Telephone No.

NONE

Facsimile No.

NONE

Teleprinter No.

NONE

State (i.e. country) of nationality:

United States of America

State (i.e. country) of residence:

United States of America

This person is applicant for the purposes of:

☐ all designated States

☒ all designated States except the United States of America

☐ the United States of America only

☐ the States indicated in the Supplemental Box

Box No. III FURTHER APPLICANTS AND/OR (FURTHER) INVENTORS

Name and address: (Family name followed by given name: for a legal entity, full official designation. The address must include postal code and name of country.)

LIVINGSTON, PHILIP O.
156 East 79th Street
Apartment 6C
New York, New York 10021
United States of America

This person is:

☐ applicant only

☒ applicant and inventor

☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

United States of America

State (i.e. country) of residence:

United States of America

This person is applicant for the purposes of:

☐ all designated States

☐ all designated States except the United States of America

☒ the United States of America only

☐ the States indicated in the Supplemental Box

Name and address: (Family name followed by given name: for a legal entity, full official designation. The address must include postal code and name of country.)

HELLING, FRIEDHELM
303 East 71st Street
Apartment 6H
New York, New York 10021
United States of America

This person is:

☐ applicant only

☒ applicant and inventor

☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

Germany

State (i.e. country) of residence:

United States of America

This person is applicant for the purposes of:

☐ all designated States

☐ all designated States except the United States of America

☒ the United States of America only

☐ the States indicated in the Supplemental Box

☐ Further applicants and/or (further) inventors are indicated on a continuation sheet.

Box No. IV AGENT OR COMMON REPRESENTATIVE: OR ADDRESS FOR CORRESPONDENCE

The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as

☒ agent

☐ common representative

Name and address: *Family name followed by given name for a legal entity, full official designation. The address must include postal code and name of country.*

Telephone No

(212)977-9550

WHITE, JOHN P.
Cooper & Dunham
30 Rockefeller Plaza
New York, New York 10112
United States of America

Facsimile No

(212)664-0525

Telex No

422523 COOP UI

☐ Mark this check-box where no agent or common representative is/has been appointed and the space above is used instead to indicate a special address to which correspondence should be sent.

Box No. V DESIGNATION OF STATES

The following designations are hereby made under Rule 4.9(a) (mark the applicable check-boxes; at least one must be marked):

Regional Patent

☒ EP European Patent: AT Austria, BE Belgium, CH and LI Switzerland and Liechtenstein, DE Germany, DK Denmark, ES Spain, FR France, GB United Kingdom, GR Greece, IE Ireland, IT Italy, LU Luxembourg, MC Monaco, NL Netherlands, PT Portugal, SE Sweden, and any other State which is a Contracting State of the European Patent Convention and of the PCT

☐ OA OAPI Patent: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Gabon, Guinea, Mali, Mauritania, Senegal, Togo, and any other State which is a member State of OAPI and a Contracting State of the PCT (if other kind of protection or treatment desired, specify on dotted line)

National Patent (if other kind of protection or treatment desired, specify on dotted line):

☐ AT Austria
☒ AU Australia
☐ BB Barbados
☐ BG Bulgaria
☐ BR Brazil
☒ CA Canada
☐ CH and LI Switzerland and Liechtenstein
☐ CZ Czech Republic
☐ DE Germany
☐ DK Denmark
☐ ES Spain
☒ FI Finland
☐ GB United Kingdom
☒ HU Hungary
☒ JP Japan
☐ KP Democratic People's Republic of Korea

☒ KR Republic of Korea
☐ LK Sri Lanka
☐ LU Luxembourg

☐ MG Madagascar
☐ MN Mongolia
☐ MW Malawi
☐ NL Netherlands
☒ NO Norway
☒ NZ New Zealand
☐ PL Poland
☐ PT Portugal
☐ RO Romania
☒ RU Russian Federation
☐ SD Sudan
☐ SE Sweden
☐ SK Slovak Republic
☐ UA Ukraine
☒ US United States of America
(continuation-in-part)

Check-boxes reserved for designating States (for the purposes of a national patent) which have become party to the PCT after issuance of this sheet:

☐
☐

In addition to the designations made above, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except the designation(s) of _____

The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit. Confirmation of a designation consists of the filing of a notice specifying that designation and the payment of the designation and confirmation fees. Confirmation must reach the receiving Office within the 15-month time limit.

Box No. VI PRIORITY CLAIM		Further priority claims are indicated in the Supplemental Box <input type="checkbox"/>	
The priority of the following earlier application(s) is hereby claimed:			
Country (in which, or for which, the application was filed)	Filing Date (day/month/year)	Application No.	Office of filing (with the receiving Office, international application)
Item (1): United States of America	22 January 1993	08/009,268	
Item (2):			
Item (3):			
Mark the following check-box if the certified copy of the earlier application is to be issued by the Office which for the purposes of the present international application is the receiving Office (a fee may be required): <input checked="" type="checkbox"/> The receiving Office is hereby requested to prepare and transmit to the International Serial Number 08/009,268 Bureau a certified copy of the earlier application(s) identified above as item(s)			
Box No. VII EARLIER SEARCH			
Fill in where a search (international, international-type or other) by the International Searching Authority has already been carried out or requested and the Authority is now requested to base the international search, to the extent possible, on the results of that earlier search. Identify such search or request either by reference to the relevant application (or the translation thereof) or by reference to the search request.			
Country (or regional Office):	Date (day/month/year):	Number:	
United States of America	22 January 1993	08/009,268	
Box No. VIII CHECK LIST			
This international application contains the following number of sheets: 1. request : 4 sheets 2. description : 143 sheets 3. claims : 5 sheets 4. abstract : 1 sheets 5. drawings : 26 sheets Total : 179 sheets		This international application is accompanied by the item(s) marked below: 1. <input type="checkbox"/> separate signed power of attorney 2. <input type="checkbox"/> copy of general power of attorney 3. <input type="checkbox"/> statement explaining lack of signature 4. <input type="checkbox"/> priority document(s) identified in Box No. VI as item(s): 5. <input checked="" type="checkbox"/> fee calculation sheet 6. <input type="checkbox"/> separate indications concerning deposited microorganisms 7. <input type="checkbox"/> nucleotide and/or amino acid sequence listing (diskette) 8. <input checked="" type="checkbox"/> other (specify): Assignment	
Figure No. _____ of the drawings (if any) should accompany the abstract when it is published.			
Box No. IX SIGNATURE OF APPLICANT OR AGENT			
Next to each signature, indicate the name of the person signing and the capacity in which the person signs (if such capacity is not obvious from reading the request). SLOAN-KETTERING INSTITUTE FOR CANCER RESEARCH BY: <u>James S. Quirk</u> DATE: <u>1/21/94</u> NAME: Mr. James S. Quirk TITLE: Senior Vice President			

For receiving Office use only	
1. Date of actual receipt of the purported international application: _____ 3. Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application: _____ 4. Date of timely receipt of the required corrections under PCT Article 11(2): _____ 5. International Searching Authority specified by the applicant: <u>ISA /</u>	2. Drawings: <input type="checkbox"/> received: <input type="checkbox"/> not received: 6. <input type="checkbox"/> Transmittal of search copy delayed until search fee is paid
For International Bureau use only	
Date of receipt of the record copy by the International Bureau: _____	

Box No. VI **PRIORITY CLAIM** Further priority claims are: ☐ filed in the Supplemental Box ☐

The priority of the following earlier application(s) is hereby claimed:

Country (in which, or for which, the application was filed)	Filing Date (day/month/year)	Application No.	Office of filing (only for regional or international application)
Item (1) United States of America	22 January 1993	08/009,268	
Item (2)			
Item (3)			

Mark the following check-box if the certified copy of the earlier application is to be issued by the Office which for the purposes of the present international application is the receiving Office (a fee may be required):

☒ The receiving Office is hereby requested to prepare and transmit to the International Serial Number 08/009,268 Bureau a certified copy of the earlier application(s) identified above as item(s):

Box No. VII EARLIER SEARCH

Fill in where a search (international, international-type or other) by the International Searching Authority has already been carried out or requested and the Authority is now requested to base the international search to the extent possible, on the results of that earlier search. Identify such search or request either by reference to the relevant application (or the translation thereof) or by reference to the search request:

Country (or regional Office): United States of America Date (day/month/year): 22 January 1993 Number: 08/009,268

Box No. VIII CHECK LIST

This international application contains the following number of sheets:

1. request : 4 sheets
2. description : 143 sheets
3. claims : 5 sheets
4. abstract : 1 sheets
5. drawings : 26 sheets
Total : 179 sheets

This international application is accompanied by the item(s) marked below:

- | | |
|---|--|
| 1. <input type="checkbox"/> separate signed power of attorney | 5. <input checked="" type="checkbox"/> fee calculation sheet |
| 2. <input type="checkbox"/> copy of general power of attorney | 6. <input type="checkbox"/> separate indications concerning deposited microorganisms |
| 3. <input type="checkbox"/> statement explaining lack of signature | 7. <input type="checkbox"/> nucleotide and/or amino acid sequence listing (diskette) |
| 4. <input type="checkbox"/> priority document(s) identified in Box No. VI as item(s): | 8. <input checked="" type="checkbox"/> other (specify): Assignment |

Figure No. _____ of the drawings (if any) should accompany the abstract when it is published.

Box No. IX SIGNATURE OF APPLICANT OR AGENT

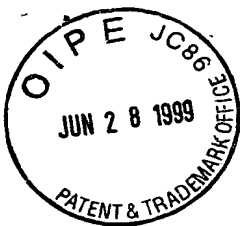
Next to each signature, indicate the name of the person signing and the capacity in which the person signs (if such capacity is not obvious from reading the request).

Philip Livingston MD 1/21/94
Philip P. Livingston Date

Friedhelm Helling 1/21/94
Friedhelm Helling Date

For receiving Office use only		2. Drawings:
1. Date of actual receipt of the purported international application:		<input type="checkbox"/> received:
3. Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application:		<input type="checkbox"/> not received:
4. Date of timely receipt of the required corrections under PCT Article 11(2):		
5. International Searching Authority specified by the applicant: ISA /	6. <input type="checkbox"/> Transmittal of search copy delayed until search fee is paid	

For International Bureau use only
Date of receipt of the record copy by the International Bureau:



Dkt. 43016/JPW/SHS

THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268 Group Unit: 1813
Filed : November 16, 1995 Examiner: Kresek Staples
For : GANGLIOSIDE-KLH CONJUGATE VACCINES WITH QS-21

1185 Avenue of the Americas
New York, New York 10036
June 23, 1999

Sir:

PETITION UNDER 37 C.F.R. § 1.183 TO SUSPEND THE RULES

This Petition under 37 C.F.R. 1.183 is submitted pursuant to MPEP 711(c)(III)(G) which states that in the event that applicant considers the requirement for a terminal disclaimer to be inappropriate under the circumstances of the application at issue, the applicant should file a petition under 37 C.F.R. 1.183 (and petition fee) to request a waiver of this requirement. Authorization is hereby given to charge the \$130.00 fee to Deposit Account No. 03-3125 enclose the \$130.00 fee under 37 C.F.R. 1.17(h) for petitions to the commissioner, unless otherwise specified.

MPEP 711(c)(III)(G) states:

The grant of such a petition, however, is strictly limited to situations wherein applicant has made a showing of an "extraordinary situation" in which "justice requires" the requested relief. Such situations are namely when: (A) the abandonment of the application caused no actual delay in prosecution (e.g., application revived solely for copendency with a continuing application whose prosecution was unaffected by the abandonment)...

Applicants contend that the above example presented in the MPEP accords with the facts of the subject application. Applicants point out that they are reviving the subject application solely to

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268
Filed : November 16, 1995
Page 2

maintain its pendency with PCT/US94/00757. Applicants contend that the prosecution of PCT/US94/00757 has not been affected by the abandonment. Applicants also point out that in a April 28, 1999 telephone conference, Ms. Lissi Mojica of the Office of Petitions of the United States Patent and Trademark Office indicated to Mr. Spencer Schneider of the undersigned attorney's office that the terminal disclaimer requirement could be waived under the facts of the subject application.

Accordingly, applicants hereby petition that the rules be suspended such that the terminal disclaimer requirement be waived.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

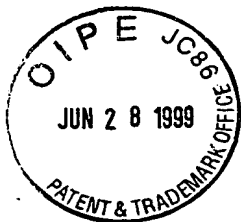
No fee is deemed necessary. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Albert Wai-Kit Chan

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
<u>Albert Wai-Kit Chan</u> Albert Wai-Kit Chan Reg. No. 36,479	<u>6/23/99</u> Date

John P. White
Registration No. 28,678
Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400



Declaration and Power of Attorney

As a below-named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

GANGLIOSLIDE-KLH CONJUGATE VACCINE PLUS QS-21

the specification of which
(check one)

_____ is attached hereto.

☒ was filed on June 7, 1995 as

Application Serial No. 08/477,147

and was amended on _____
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information of which I am aware which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
<u>Number</u>	<u>Country</u>	<u>Filing Date</u>	<u>Yes</u>	<u>No</u>
<u>N/A</u>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Sections 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status</u>
PCT/US94/00757	January 21, 1994	pending
08/009,268	January 22, 1993	abandoned

And I hereby appoint

John P. White (Reg. No. 28,678); Thomas F. Moran (Reg. No. 16,579); Norman H. Zivin (Reg. No. 25,385); Ivan S. Kavrukov (Reg. No. 25,161); Christopher C. Dunham (Reg. No. 22,031); Thomas G. Carulli (Reg. No. 30,616); Robert D. Katz (Reg. No. 30,141); Peter J. Phillips (Reg. No. 29,691); Richard S. Milner (Reg. No. 33,970); Matthew J. Golden (Reg. No. 35,161); Albert Wai-Kit Chan (Reg. No. 36,479); Kristina L. Konstas (Reg. No. 37,864); Robert T. Maldonado (Reg. No. 38,232); and Lewis J. Kreisler (Reg. No. 38,522),

and each of them, all c/o Cooper & Dunham, LLP, 1185 Avenue of the Americas, New York, New York 10036 my attorneys, each with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, to transact all business in the Patent and Trademark Office connected therewith and to file any International Applications which are based thereon under the provisions of the Patent Cooperation Treaty.

Please address all communications, and direct all telephone calls, regarding this application to

John P. White Reg. No. 28,678
 Cooper & Dunham
 1185 Avenue of the Americas
 New York, New York 10036

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first joint inventor Philip Ordway Livingston

Inventor's signature Philip Livingston

Citizenship United States

Date of signature Philip Livingston 6/30/94

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Full name of joint
inventor (if any) Friedhelm Helling

Inventor's signature Friedhelm Helling

Citizenship Germany

Date of signature 8/22/95

Residence 504 East 63rd Street, Apartment 25N, New York, New York 10021

Post Office Address same as residence address

FILING RECEIPT
CORRECTED



JPW 477,097
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
08/477,097	06/07/95	1806	\$904.00	43016-B/JPW/	26	22	1

JOHN P WHITE
COOPER & DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of the Filing Receipt with the changes noted thereon.

Applicant(s)

PHILIP O. LIVINGSTON, NEW YORK, NY; FRIEDHELM HELLING,
NEW YORK, NY.

CONTINUING DATA AS CLAIMED BY APPLICANT-

THIS APPLN IS A CON OF PCT/US94/00757 01/21/94
WHICH IS A CON OF 08/009,268 01/22/93 ABN

FOREIGN FILING LICENSE GRANTED 09/20/95

TITLE

GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS QS-21

PRELIMINARY CLASS: 424

JUL - 8 1995

**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

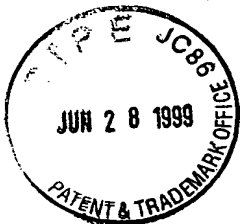
The applicant has been granted a license under 35 U.S.C. 184, if the phrase "FOREIGN FILING LICENSE GRANTED" followed by a date appears on the reverse side of this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.11. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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Dkt. 43016/JPW/SHS

THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268 Group Unit: 1813
Filed : January 22, 1993 Examiner: Kresek Staples
For : GANGLIOSIDE-KLH CONJUGATE VACCINES WITH QS-21

1185 Avenue of the Americas
New York, New York 10036
June 23, 1999

Sir:

COMMUNICATION INQUIRING AS TO COPENDENCY STATUS OF APPLICATION

This Communication is submitted to ensure that applications which claim the priority the subject application are eligible for withdrawal of finality under 37 C.F.R. 1.129(a). In the event that copendency between the subject application and PCT/US94/00757 is required for these applications to be eligible for withdrawal of finality under 37 C.F.R. 1.129(a), and if it is determined that there was no copendency, applicants hereby petition to revive the subject application under 37 C.F.R. 1.137(b).

I. Background

The following applications claim priority of the subject application:

- 1) U.S. Serial No. 08/196,154, filed November 16, 1995 (Our Docket 43016-A-PCT-US);
- 2) U.S. Serial No. 08/477,097, filed June 7, 1995 (Our Docket 43016-B);
- 3) U.S. Serial No. 08/475,784, filed June 7, 1995 Docket 43016-C);
- 4) U.S. Serial No. 08/477,147, filed June 7, 1995 (Our

Applicants : Philip O. Livingston and Friedhelm Helling
U.S. Serial No.: 08/009,268
Filed : January 22, 1993
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Docket 43016-D); and

- 5) U.S. Serial No. 08/481,809, filed June 7, 1995 (Our Docket 43016-E).

In the event that the subject application was not copending with PCT/US94/00757, applicants hereby submit this petition under 37 C.F.R. § 1.137(b).

Petition under 37 C.F.R. 1.137(b)

A petition under 37 C.F.R. 1.137(b) requires: (a) the required reply, unless previously filed; (b) the petition fee as set forth in 37 C.F.R. 1.17(m); (c) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional; (d) any terminal disclaimer required pursuant to 37 C.F.R. 1.137(c).

Required Reply

In the event that it is determined that the revival of the subject application results in the application being pending as of the last day of the statutory period for filing a response, i.e. November 2, 1993, and if an extension of time of three (3) months is needed to ensure copendency with PCT/US94/00757, applicants hereby petition for a three month extension of time in connection with the subject application. Applicants have previously established small entity status. The current required for a three month extension of time is \$435.00 and authorization is hereby given to charge this amount to Deposit Account No. 03-3125, if it is deemed necessary. Accordingly, the subject application would have been pending at the time PCT/US94/00757 was filed.

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Petition fee

The fee under 37 C.F.R. 1.17(m) for a petition to revive an unintentionally abandoned application for a small entity is \$605.00 and authorization is hereby given to charge this amount to Deposit Account No. 03-3125, if it is deemed necessary.

Statement of unintentional delay

Applicants contend that entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137 (b) was unintentional.

The United States Patent and Trademark Office issued an office action on August 2, 1993 in connection with the subject application. A response was due November 2, 1993. However, applicants did not respond to the office action. Accordingly, the United States Patent and Trademark Office issued a Notice of Abandonment in connection with the subject application on March 9, 1994.

On January 21, 1994, applicants filed International Application No PCT/US94/00757 (our docket 43106-A-PCT) and claimed priority of the above identified application. Applicants believed that the subject application was still pending at the time that PCT/US94/00757 was filed. In support, applicants attach hereto, as Exhibit 1, a copy of the Request filed in connection with PCT/US94/00757 which states on page 3 that the priority of U.S. Serial No. 08/009,268 was claimed.

Applicants contend that the subject application was unintentionally abandoned. Applicants believed that the subject application was still pending at the time PCT/US94/00757 was filed. If they had realized that their failure to respond to the office action within the statutory period would have resulted in a lack of copendancy